

APR 21 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNULFO ESTUPINAN-GUERRERO;  
MARIA ROSAURA CANO DE  
ESTUPINAN,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

Nos. 06-75520  
07-72060

Agency Nos. A077-831-450  
A077-831-451

MEMORANDUM \*

On Petitions for Review of Orders of the  
Board of Immigration Appeals

Submitted April 13, 2009 \*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

In these consolidated petitions, Arnulfo Estupinan-Guerrero and Maria  
Rosaura Cano De Estupinan, spouses and natives and citizens of Mexico, petition

---

\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. See Fed. R. App. P. 34(a)(2).

for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's decision denying their applications for cancellation of removal (No. 06-75520), and the BIA's order denying their motion to reopen (No. 07-72060). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo due process claims. *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). In No. 06-75520, we dismiss in part and deny in part the petition for review. In No. 07-72060, we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the agency's discretionary determination that petitioners failed to show the requisite hardship to a qualifying relative. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

Contrary to petitioners' contention, the agency's interpretation of the hardship standard falls within the broad range authorized by the statute. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004-06 (9th Cir. 2003).

Petitioners contend that the agency violated due process by mischaracterizing and ignoring their evidence of hardship, and by refusing to continue proceedings to allow for additional testimony. Contrary to petitioners' contentions, the proceedings were not "so fundamentally unfair that [they were] prevented from reasonably presenting [their] case." *Colmenar*, 210 F.3d at 971

(internal quotation marks and citation omitted). Moreover, petitioners failed to demonstrate that additional testimony would have affected the outcome of the proceedings. *See id.* (requiring prejudice to prevail on a due process challenge).

The evidence petitioners presented with their motion to reopen concerned the same basic hardship grounds as their applications for cancellation of removal. We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 601-03 (9th Cir. 2006).

Our conclusion that we lack jurisdiction to review the BIA's determination that petitioners did not make out a prima facie case of hardship forecloses their contention that the BIA failed to explain adequately its reasons for denying the motion to reopen and failed to consider and address the entirety of the evidence. *See id.* at 603-04.

Petitioners' contention that the BIA failed to utilize the correct standard in denying their motion to reopen is unavailing.

Petitioners' remaining contentions are unpersuasive.

**No. 06-75520: PETITION FOR REVIEW DISMISSED in part;  
DENIED in part.**

**No. 07-72060: PETITION FOR REVIEW DISMISSED in part;  
DENIED in part.**